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December 20, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: MM Docket No. 93-254

Dear Mr. Caton:

Transmitted herewith on behalf of SCI Television, Inc. are an original and four (4) copies of its Comments in response to the Notice of Inquiry in the above-referenced proceeding.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely yours,


Neal J. Friedman
Counsel for
SCI Television, Inc.

Enclosures

cc: Mr. William C. Bevins
Mr. George N. Gillett, Jr.
Barry F. Schwartz, Esq.
Terry C. Bridges, Esq.
Mr. Robert E. Selwyn
Mr. Larry D. Haugen
General Managers

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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DEC 20 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Limitations on Commercial Time on
Television Broadcast Stations

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MM Docket No. 93-254

TO: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF SCI TELEVISION, INC.

Vincent A Pepper
Neal J. Friedman

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(202) 296-0600

December 20, 1993

SUMMARY

SCI Television, Inc., the parent corporation of the licensees of seven major market television stations and an affiliate of a firm that produces infomercials, believes that marketplace forces are sufficient to regulate the amount of commercial matter on television, exclusive of programming directed to children 12 and under.

The instant proceeding is the fifth time in the past 30 years that the Commission has considered imposing commercial limits. In each instance the Commission declined to interfere in the marketplace and, in 1984, the Commission eliminated its former 16-minute "guideline." SCI believes the basis for the Commission's restraint is as valid today as it ever was.

Major changes in the video marketplace in the past ten years argue even more strongly for continued reliance on marketplace regulation. The instant proceeding addresses only free over-the-air television and does not seek to impose restraints on competing media.

At the SCI stations, which we believe are typical of the television industry as a whole, commercial availabilities average seven to eight minutes per half hour in all dayparts of which 10 percent is reserved for public service announcements and station promotions. This is within the Commission's former guideline and further evidence that marketplace regulation is working well. Indeed, SCI believes that any attempt on its part to increase the

commercial load in popular programs such as news would be counter-productive.

Program-length commercials, or "infomercials," serve an important purpose. The Commission has previously determined that "home shopping" stations operate in the public interest and are entitled to must-carry status. On that basis, it cannot prohibit licensees from airing program-length commercials. SCI has found that such programming is acceptable to viewers and advertisers. It allows the presentation of commercial information about goods and services that cannot be provided in the traditional short-form commercial. The long-form commercial provides an important service to viewers about the availability of homes for sale, vacation travel, investments, golf, cooking and other special interests from the comfort of their own home.

Any attempt to regulate commercial speech would be fraught with constitutional problems. Commercial speech is protected under the First Amendment. Any regulation must advance a compelling state interest. SCI believes that a restriction on the broadcast of truthful information concerning legal goods and services would not advance such an interest and would not survive constitutional scrutiny.

SCI Television, Inc. urges the Commission to refrain from any attempts to regulate commercial speech and submits that continued reliance on marketplace regulation is in the public interest.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Limitations on Commercial Time on)
Television Broadcast Stations)

MM Docket No. 93-254

TO: The Commission

COMMENTS OF SCI TELEVISION, INC.

SCI Television, Inc. ("SCI"),^{1/} by its attorneys hereby submits its comments in response to the above-captioned Notice of Inquiry ("NOI"), FCC 93-459, released October 7, 1993.^{2/}

I. INTRODUCTION

1. The Commission seeks comments on a variety of questions related to the central issue of whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. NOI at ¶ 1. SCI submits that there is no demonstrated public interest benefit that would be obtained from the establishment of commercial limits on television stations, other than those already mandated by the Children's Television Act of 1990 and implemented in Section 73. 670 of the

^{1/} SCI is the corporate parent of the licensees of the following television stations: WSBK-TV, Boston, MA; WAGA-TV, Atlanta, GA; WTVT-TV, Tampa, FL; WJW-TV, Cleveland, OH; WJBK-TV, Detroit, MI; WITI-TV, Milwaukee, WI; and KNSD-TV, San Diego, CA and Television Translator K62AK, La Jolla, CA. An affiliated entity, Guthy-Renker, Inc., is engaged in the business of producing infomercials.

^{2/} By Order, DA No. 93-1425, the Chief, Mass Media Bureau, extended the date for comments to December 20, 1993 and the deadline for reply comments to January 5, 1994.

Rules of the Commission, and that any such attempt would be found unconstitutional.

2. The present NOI marks the fifth time in the past 30 years that the Commission has considered the question of whether it should regulate the amount of commercialization on television. See Notice of Proposed Rule Making, 28 Fed. Reg. 5158 (May 23, 1963); Commercial Advertising Standards, 36 FCC 45 (1964); TV Overcommercialization, 49 RR2d 391 (1981); Report and Order in MM Docket No. 83-670 ("Television Deregulation") 98 FCC 2d 1076, recon. denied, 104 FCC 2d 357 (1986), aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987). In each instance, the Commission declined to interfere in the marketplace.^{3/} The basis for the Commission's restraint is as valid and sound today as it was on each of the past four occasions.

3. The Commission's current inquiry is the result of the addition of new Section 614(g) to the Communications Act of 1934, 47 U.S.C. 534(g), which directed the Commission to determine, regardless of prior proceedings, whether stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest,

^{3/} In 1973 the Commission adopted a 16-minute "guideline" for licensees. Amendments to Delegations of Authority, 43 FCC 2d (1973). The 1984 Television Deregulation Report and Order repealed the guideline because the Commission found that "the levels of commercialization have remained significantly below the 16 minute ceiling imposed by the guideline." 98 FCC 2d at 1102.

convenience and necessity.^{4/} SCI will leave to others who are more directly involved in a full-time "home shopping" format the issue of whether such programming is in the public interest and will limit its comments to the issue of commercial limits and program length commercials.

II. THERE HAVE BEEN MAJOR CHANGES IN THE VIDEO MARKETPLACE IN RECENT YEARS THAT FURTHER JUSTIFY NO COMMERCIAL LIMITS

4. There have been major changes in the video marketplace since the Commission last visited this issue. In 1991, the Commission's Office of Plans and Policy issued a report that painted a bleak future for the television industry:

In the next ten years, broadcasters will face intensified competition as alternative media, financed not only by advertising but also by subscription revenues, and offering multiple channels of programming, expand their reach and their audience. Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component of the video mix, small market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some will likely go dark. The analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of control over programming are no longer justified and may impede the provision of broadcast services.

F. Setzer, J. Levy, Broadcast Television in a Multichannel Marketplace, OPP Working Paper No. 26, 6 FCC Rcd 3996, 3999(1991) ("OPP Report").

^{4/} All of the SCI stations are full-service television stations offering a mix of entertainment and informational programming. Although the stations do air program length commercials from time to time, none of the stations is predominantly utilized for such purposes and SCI has no plans to inaugurate such a format on any of its stations.

5. Following the issuance of the OPP Report, the Commission issued a Notice of Inquiry seeking comments. Notice of Inquiry in MM Docket 91-221, 6 FCC Rcd 4961 (1991) and, subsequently, a Notice of Proposed Rulemaking, In the Matter of Review of The Commission's Regulations Concerning Television Broadcasting, 7 FCC Rcd 4111 (1992). The comment period closed on September 23, 1992 and there has been no further action in the proceeding.

6. In the two years since the issuance of the OPP Report, there have been further changes. The promise of 500-channel cable systems, the imminent launch of satellites capable of bringing television programming direct to viewers from space, the convergence of telephone companies, cable operators and the computer industry together with the design and planning of the information superhighway are evidence of the rapid changes taking place. Since the release of the 1991 report, a fourth national television network has matured to the point where it reaches most of the country and there are plans for at least two more networks.

7. Some have predicted the imminent death of over-the-air television in the emerging multichannel marketplace. But, television did not kill radio or the movies as was widely predicted when the first black and white pictures began to flicker on tiny screens a half century ago, nor, given the opportunity of a level playing field, will free over-the-air local television be killed off by the new technologies. SCI shares with Commissioner James Quello his optimism that over-the-air television will survive in a

more crowded and more competitive marketplace. In a recent speech, Commissioner Quello noted:

In the final analysis, programs will still pass through television screens and the major, most popular screens will still be the local network affiliates and strong independent stations. . . . It is important to remember that people watch TV programs and stations, not delivery systems. And broadcasters have the most experience and an entrenched position in developing and procuring attractive TV programming to serve local tastes and needs.

Remarks Before MSTV's 7th Annual HDTV Update, November 30, 1993.

8. But over-the-air television can only survive in a marketplace where it is treated in the same manner as its competitors who are either unregulated or much more lightly regulated. Free over-the-air television will not survive in a marketplace in which it is prohibited from engaging in the same selling practices that its competitors are able to profit from. The NOI speaks only of placing limits on over-the-air television. It makes no mention of placing limits on the competing media. Broadcasters understand and accept the public interest obligation the Communications Act imposes on them as licensees of the Commission. SCI's stations in seven major markets throughout the United States have a distinguished record of news and public affairs programming and service to their local communities. The vast majority of other local television broadcasters can make the same claim. Competing media cannot. What makes all this possible is the revenue generated in a free and open market. Restrictions on broadcasters as proposed in the NOI are likely to inhibit the ability of television stations to present the same level of public interest programming.

III. MARKETPLACE FORCES CONTINUE TO WORK WELL TO LIMIT THE AMOUNT OF COMMERCIAL CONTENT ON TELEVISION

9. Some will no doubt argue in this proceeding that, without restrictions, television stations will jam as much commercial time as they can sell into every hour. The fact is, as the Commission discovered in 1984, marketplace forces prevent that. Empirical data presented to the Commission demonstrated that "commercial level will be more effectively regulated by audience selection and market forces than by guidelines." Television Deregulation, 98 FCC 2d at 1104.

10. The declaration of Robert E. Selwyn, vice president of SCI, attached as Exhibit 1, details the commercial practices of the SCI stations. Mr. Selwyn notes that the stations have very little control over the amount of commercial time in network programming.^{5/} The networks provide a break of one minute in the middle of one-hour programs and at the end of each broadcast. Declaration at ¶ 3. Syndicated programming is typically formatted for six or seven minutes of commercial time per half hour. Most syndicated programs are sold on a "barter" basis in which the syndicator retains one or two minutes of commercial time as consideration for providing the program and the local station is free to sell the remaining commercial time. Id. at ¶ 4.^{6/}

^{5/} Five the of SCI stations are affiliates of the CBS Television Network. KNSD-TV is an NBC affiliate and WSBK-TV is an independent station.

^{6/} Neither the networks nor the syndicators are subject to Commission regulation and the Commission does not seek to bring
(continued...)

11. Thus, the only programming over which a local station exerts complete control of the commercial content is that which it produces itself -- principally news and public affairs broadcasts. A major source of revenue for most television stations is the early evening locally-produced newscast -- often one hour in length. Advertisers are especially attracted to newscasts. Typically, the SCI stations format their news programs for seven to eight minutes of advertising per half hour and 14 to 16 minutes in an hour-long news broadcast. Id. at ¶ 5. The newscasts are generally sold out. Why, then, don't the stations increase the amount of advertising time and reduce the "news hole?" Mr. Selwyn points out at ¶ 6. of his declaration that this would be counter-productive from a business standpoint.

12. The remote control device has turned viewers into "channel surfers." If a two-minute commercial break is increased to two and a half or three minutes, viewers may sample what's on other stations' newscasts, may find something they like and may not come back. The result is a reduction in the station's ratings. With lower ratings, advertisers will pay less for commercial time and the station's overall revenue will drop together with the number of commercial minutes.

13. There is, therefore, no incentive for stations to sell an unlimited amount of commercial time. On the SCI stations, there is an average of seven to eight minutes per half hour available for

^{6/} (...continued)
them within the ambit of this proceeding.

non-program elements including advertising, station promotions, public service and promotional announcements and the required hourly station identification. Id. at ¶ 7. The SCI stations set aside approximately 10 percent of their available commercial inventory for public service announcements. As Mr. Selwyn points out, SCI believes it has an obligation to the communities in which it operates, beyond that imposed on it by the Communications Act and the Commission, to provide public service announcements of importance and value to viewers in those communities. Id.

14. Depending on the season of the year and the daypart, the available advertising time may not all be sold, making additional time available for public service announcements and station promotions. Thus, it would be the rare instance in which there would be more than 16 minutes per hour of paid commercial time.

15. The experience of the SCI stations, which is typical of most stations throughout the nation, is that there is a market-imposed limit on the amount of commercial programming that viewers and advertisers will accept. The level of commercial programming on the SCI stations is generally within the 16-minute per hour "guideline" the Commission formerly imposed. Today, as in 1984, market forces are adequate to prevent an excess of commercialism. In the face of this evidence, no additional regulation is required.

IV. PROGRAM-LENGTH COMMERCIALS SERVE AN IMPORTANT PURPOSE

16. The 1984 television deregulation order eliminated the previous ban on program-length commercials.^{2/} Television Deregulation, 98 FCC 2d at 1102. The NOI at ¶8 seeks comment on whether there should be a limit on commercial programming that would preclude the broadcast of program-length commercials or whether some provision should be made for the presentation of infomercials and extended sales presentations.

17. As noted at n.1, an affiliated company of SCI, Guthy-Renker, Inc., is engaged in the business of producing infomercials. The SCI stations selectively broadcast infomercials and extended sales presentations from time to time. None of the stations has a format that is devoted principally to "home shopping" programming as that term is defined at n.7 of the NOI.

18. The Commission has previously determined that "home shopping" stations operate in the public interest and are, therefore, entitled to must-carry status. Report and Order in MM Docket No. 93-8, 8 FCC Rcd 5321 (1993), petition for reconsideration pending. The Commission determined that "the record clearly demonstrates that market forces have revealed a desire among a significant number of television viewers for home shopping programming." Id. at 5326-27. The Commission further noted that the record had shown that home shopping stations provide an

^{2/} The Commission prohibits program-length commercials in children's television programming. In the Matter of Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd 2111 (1991).

important service to a significant number of viewers who either do not want to or cannot shop in a more traditional manner. Id. at 5327.

19. If the Commission determines that stations with a home shopping format are operating in the public interest, then it cannot find that a station that airs infomercials on an occasional basis is not operating in the public interest.^{8/} The Commission's Report and Order noted the comments of the National Infomercial Marketing Association that program-length commercials are made possible only by consumer interest and they are a product of the commercial flexibility the Commission sought to encourage in its 1984 deregulation Order. Id., citing Television Deregulation, supra, at 1105.

20. Infomercials are, by definition, a hybrid of a commercial and an informational program. Commercials are intended to provide information to consumers to allow them to make informed purchasing decisions. To be sure, the traditional short-form commercial is designed to persuade the viewer to purchase a particular good or service. But, as discussed in Section V, infra, the courts have recognized the value and importance of commercial speech and have accorded it First Amendment protection.

21. The infomercial is as much informational as it is commercial. The SCI stations have discovered that there are some goods and services that cannot be adequately described within the

^{8/} The constitutional problems inherent in any attempt to regulate commercial speech are discussed in Section V, infra.

context of a 30-second or one-minute commercial spot. Moreover, the long-form commercial provides an important service to viewers. For example, a real estate broker presenting a long-form program allows viewers to be exposed to a large number of available properties from the comfort of their own homes. A half-hour program offering discount travel provides similar opportunities to viewers. Similarly, other special interest programs on golf, cooking, investments, etc. provide important information to viewers about a particular good or service.

22. Common sense dictates that such programs would not remain on the air if there were no viewer acceptance. If stations received complaints from viewers about long-form commercial programs, they would respond. If viewers did not watch in sufficient numbers, advertisers would not purchase the time. And, of course, if the programs did not translate into sales for the advertiser, they would be gone. But, rather than disappearing, infomercials are thriving.

23. The SCI stations are full-service television stations. They do not run hour after hour of infomercials. Infomercials appear on the SCI stations as part of a broad mix of programming designed to appeal to the widest possible range of viewers. Advertisers and viewers alike have found infomercials to be useful in this context. Any attempt to prohibit infomercial programs that present truthful information about legal goods and services would disserve the public interest. The record in MM Docket 93-8 failed to show any evidence that stations with a full-time home shopping

format did not operate in the public interest. Similarly, SCI believes that there is no evidence that can be developed that would demonstrate that stations that air infomercials on an occasional basis do not also operate in the public interest.

V. ANY ATTEMPT TO REGULATE COMMERCIAL SPEECH WILL BE FRAUGHT WITH CONSTITUTIONAL PROBLEMS THAT MAY PROVE INSURMOUNTABLE

24. The Commission faces a difficult task in attempting to regulate commercial speech. The Commission's 1984 Report and Order touched briefly on the constitutional problems inherent in any attempt to regulate protected commercial speech. Television Deregulation at pp. 1103-04. The Commission stated that it was concerned with the "potential chilling effect on commercial speech" which its guideline might effect and observed that the Supreme Court had granted significant protection to commercial speech. Id.

25. The Supreme Court extended First Amendment protection to commercial speech in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 447. 455-56 (1976). The government may "regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest." Sable Communications of California, Inc. v. FCC, 492 U.S. 115, 126 (1989) (upholding FCC restriction on "dial-a-porn" services). Commercial speech, the Court has held, enjoys a lesser level of protection than other forms of constitutionally guaranteed expression. Board of Trustees of State University of New York v. Fox, 492 U.S. 469 (1989).

26. In Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557, 566 (1980) the Court articulated a four-factor test for commercial speech:

At the outset we must determine whether the expression is protected by the First Amendment. (1) For commercial speech to come that within that provision, it must at least concern lawful activity and not be misleading. Next, we will ask (2) whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine (3) whether the regulation directly advances the governmental interest asserted, and (4) whether it is not more extensive than is necessary to serve that interest.

27. During its most recent term, the Court had occasion to consider the question of protected commercial speech in two contexts with different results. Both applied the Central Hudson test, which would be applicable to any attempt by the Commission to regulate the quantum of commercial speech on television.

28. In U.S. v. Edge Broadcasting, __ U.S. __, 113 S.Ct. 2696 (1993), the Court upheld the Commission's ruling that a broadcast station licensed to a community in North Carolina, which does not have a legal state lottery, could not broadcast advertisements for the legal state lottery in the neighboring state of Virginia. The station is on the Virginia-North Carolina border. The Court readily agreed that the first two factors of the Central Hudson test were met: the advertising concerned lawful activity and was not misleading and the asserted governmental interest in supporting the policy of lottery states and not interfering with the policy of non-lottery states was substantial. Id. at 2699. The Court also found that the third factor was met in that the prohibition against lottery advertising by stations in non-lottery states advanced the

governmental purpose of supporting those states' gambling laws. Id. Finally, the Court found that the fourth factor was met as well because "the fit between the restriction and the government interest" was "reasonable." Id.

29. The second recent commercial speech case was Edenfield v. Fane. ___ U.S. ___, 113 S.Ct. 1792 (1993), which invalidated a Florida statute prohibiting CPAs from directly soliciting clients. Applying the Central Hudson test, the Court found that the state's interest in protecting consumers from fraudulent advertising and preserving the independence of CPAs in auditing businesses and preparing financial statements was not advanced by its ban on solicitation. Id. at 1798. Thus, the ban could not withstand scrutiny.

30. Any regulation of constitutionally protected speech must utilize the least restrictive means suitable to achieving the government's articulated, legitimate goals. United States v. O'Brien, 391 U.S. 367, 377 (1978). Even where the government has articulated a substantial interest in regulating speech, fashioning the least restrictive means of regulating such speech is not an easy task. Since 1988, courts have agreed with the Commission that there is a substantial governmental interest in protecting children from indecent speech during certain hours of the broadcast day. See Action for Children's Television v. FCC, 852 F.2d 1332 (D.C. Cir. 1988) ("ACT I"). But the Commission has, so far, been unable to craft a rule that would serve that interest in the most narrowly restrictive manner. See ACT I, supra; Action for Children's

Television v. FCC, 932 F.2d 1504 (D.C. Cir. 1991) ("ACT II"); and Action for Children's Television v. FCC ("Act III"), No. 93-1092, decided November 23, 1993, 1993 U.S. App. LEXIS 30125.

IV. CONCLUSION

31. Putting aside the question of the chilling effect on competition that a limit on commercialization would impose, see Television Deregulation, supra, at 1104, and the attendant paperwork burdens, id., the Commission would face a daunting task in attempting to (1) articulate a compelling interest in such a limit on the quantum of commercial matter and (2) fashioning a rule that would impose the limit in the least restrictive manner. Commercial speech, as the Court recently noted, serves an important role in our society:

The commercial marketplace, like other spheres of our social and cultural life, provides a forum where ideas and information flourish. Some of the ideas and information are vital, some of slight worth. But the general rule is that the speaker and the audience, not the government, assess the value of the information presented. Thus, even a communication that does no more than propose a commercial transaction is entitled to coverage of the First Amendment.

Edenfield v. Fane, supra, at 1798 (emphasis supplied).

32. The NOI presents no data that would support a limit on commercialization. To the contrary, the available data indicates that marketplace regulation continues to work well to limit the quantum of commercial matter. There is no evidence that even a "home shopping" format would be detrimental to the public interest or that the outright prohibition of such programming would serve a compelling government interest. Likewise, a blanket limit on

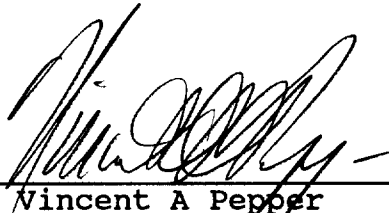
commercialization in programming other than that directed to children 12 and under would serve no governmental interest. It would, as the Commission and the Court have observed, inhibit competition, impose enormous paperwork burdens and ensnare both truthful and misleading commercial speech in its net.

For the forgoing reasons, SCI Television, Inc. respectfully recommends that the Commission take no further action in the instant proceeding and that it refrain once again from imposing any commercialization limits on television programming other than that directed to children 12 and under.

Respectfully Submitted,

SCI Television, Inc.

By

A handwritten signature in dark ink, appearing to read "Vincent A. Pepper", is written over a horizontal line.

Vincent A. Pepper
Neal J. Friedman

Its Attorneys

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December 20, 1993

EXHIBIT 1

DECLARATION

I, Robert E. Selwyn, declare under penalty of perjury as follows:

1. I am Vice President of SCI Television, Inc. The general managers of each of the SCI stations report directly to me.

2. Our general managers have extensive experience in the television industry and our company's philosophy is to afford them broad discretion in the management of the station for which they are responsible. Thus, we do not set policy on such matters as commercial limits at the corporate level. I am able to state, however, that commercial limits at each of our seven stations are more or less uniform and conform to what I understand to be standard practice throughout the television industry.

3. We have very little control over the amount of commercial material within most of the programming that we air. Six of our seven stations are network affiliates and the network determines the commercial levels within its programming. The network provides us with a break in the middle of one-hour programs and at the end of each half-hour or hour program. This local commercial break is usually one minute in length. We cannot expand the length of this break as it would cause us to rejoin the network late, which would not be acceptable to the viewers or to us.

4. Syndicated programming is formatted for six or seven minutes of commercial time per half hour. Most syndicated programming is sold on a "barter" basis; that is, the syndicator retains one to two minutes per half hour to sell to national

advertisers as consideration for providing the program to us. We are free to sell the balance of the commercial time locally.

5. The one area is which we have total control over the amount of commercial time is in our locally-produced newscasts. Our stations consistently produce high quality local news programming. We generally have seven to eight minutes of commercial time in our half-hour newscasts and 14 to 16 minutes of commercial time in our one-hour newscasts. There is a heavy demand for advertising time in these local news programs and they are often completely sold out.

6. The temptation, one might expect, would be for us to increase the amount of commercial time in these newscasts in order to accommodate the demand and maximize our revenues. In fact, we and others in the television industry have discovered that this would be counter-productive. Commercial breaks within our local newscasts are typically two to two and a half minutes. The wide use of remote control device has turned viewers into what is known in our industry as "channel surfers." If the commercial break is too long, or the breaks are too frequent, viewers will click over to one of our competitors to sample what they have available. If they like what they see, they may not come back. The result would be a reduction in our ratings. We would not be able to get the same rate for advertising time and our revenues would decrease.

7. We know from long experience that viewers will only accept a certain level of commercial time. As a result, commercial material on our stations, exclusive of children's programming

subject to the Commission's commercial limits and occasional program-length "infomercials", averages approximately seven to eight minutes per half hour in all dayparts. Of this available commercial inventory, approximately 10 percent is reserved for public service announcements of local, regional and national significance and our own station promotional announcements. We believe we have an obligation to the communities in which we operate, beyond that imposed on us as licensees of the Commission, to provide public service announcements of importance and value to our viewers.

8. The average amount of commercial time on our stations is generally within the 16 minute guideline the Commission imposed previously and abandoned a decade ago. SCI Television believes that marketplace regulation has worked extremely well and there is no need for the Commission to reestablish any guidelines or regulations concerning commercial limits other than in children's programming. Our own experience and the reaction of viewers and advertisers is the best guide.

9. In this connection, we are now learning that viewers will accept well-produced and ethical "infomercials." The SCI stations have begun to air these programs in selected time periods. These programs are required to be reviewed before airing to ensure that they comply with the Commission's sponsorship identification rules. An affiliated company, Guthy-Renker, is engaged in the business of producing infomercials. We have found this type of programming provides a valuable service to viewers and advertisers

when the nature of the product or service cannot be fully explained in the context of a 30-second or one-minute spot. SCI Television does not believe that program-length commercials, except those directed to children 12 and under, should be prohibited so long as the programming meets the letter and the spirit of the Commission's sponsorship identification rules.

The forgoing is true and correct to the best of my knowledge and belief.

DATE:

12/17/93


ROBERT E. SELWYN